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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 DONALD CALVIN,
10 Plaintiff,

11 v.

12 WHATCOM COUNTY, a municipality; THE
13 HONORABLE DAVID MCEACHRAN,
14 Whatcom County Prosecuting Attorney;
15 ROYCE BUCKINGHAM, Deputy
16 Prosecuting Attorney; DALE BRANDLAND,
17 Whatcom County Sheriff; WENDY JONES,
18 Whatcom County Jail Supervisor; and
19 OTHER UNKNOWN DEPUTIES,
20 JANE/JOHN DOE; et al.

21 Defendant.

No. C07-273RSL

ORDER CONTINUING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND
GRANTING PLAINTIFF'S MOTION
TO DISMISS DEFENDANT DALE
BRANDLAND, AND ORDER TO
SHOW CAUSE

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1 defendant's motion.

2 II. DISCUSSION

3 Throughout plaintiff's response to defendants' motion for summary judgment, he
4 indicates that he is waiting for discovery to begin so that he may support his allegations. See,
5 e.g., Dkt. #56 at 17, 19, 20, 38, 44, 45. The Court construes these references to the onset and
6 completion of discovery as a motion for a continuance under Rule 56(f). Rule 56(f) provides
7 that if the party opposing a summary judgment motion "shows by affidavit that, for specified
8 reasons, it cannot present facts essential to justify its opposition," the Court may deny the
9 summary judgment motion, order a continuance to enable additional discovery to take place, or
10 "issue any other just order." Fed. R. Civ. P. 56(f). "In civil rights cases where the plaintiff
11 appears pro se, the court must construe the pleadings liberally and must afford plaintiff the
12 benefit of any doubt." Karim-Panahi v. L.A. Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988).

13 On April 25, 2008, the Court granted the parties' motion to extend the deadline for filing
14 their Joint Status Report and Discovery Plan to May 16, 2008. Dkt. #46. However, not only
15 have the parties failed to meet that deadline, but also they have yet to file their Joint Status
16 Report and Discovery Plan with the Court. While the parties could have commenced discovery
17 as soon as they conducted a Rule 26(f) conference, plaintiff apparently believed that discovery
18 could not take place until scheduled by the Court. Construing plaintiff's *pro se* pleadings
19 liberally, the Court holds that plaintiff has met the standards of Rule 56(f). Defendants' motion
20 for summary judgment shall be renoted for December 12, 2008. Plaintiff's amended response is
21 due by December 5, 2008, and defendants' amended reply is to be submitted no later than the
22 note date of December 12, 2008.

23 In the meantime, the Court GRANTS plaintiff's "Motion to Dismiss Defendant Dale
24 Brandland" (Dkt. #43) given the information that Mr. Brandland did not occupy the office of

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1 Sheriff at any time relevant to the current proceedings. The Court further notes that plaintiff's
2 response to defendants' summary judgment motion indicates that he is awaiting the Court's
3 permission to amend his complaint so that he may include the names of the arresting officers and
4 the Whatcom County Sheriff. However, as directed by the Court's order on February 12, 2008,
5 Dkt. #30, plaintiff must file a motion to amend his complaint to add the now-known individuals
6 as defendants. In addition, if plaintiff chooses to move to amend his complaint, he must
7 concurrently file a copy of the proposed amended complaint so as to permit defendants to
8 respond before the Court rules on the motion. See Dkt. #30 at 2 n.1. Unless and until plaintiff
9 moves to amend his complaint and the Court grants leave to amend, the Court lacks jurisdiction
10 to rule for or against the heretofore unnamed defendants.

11 Finally, on August 1, 2008, defendants filed a "Motion to Strike Portions of Declarations
12 Which Violate Federal Rule 56(e)" (Dkt. #61). Pursuant to Local Civil Rule 7(g), requests to
13 strike materials attached to a motion "shall not be presented in a separate motion to strike, but
14 shall instead be included in the responsive brief" Defendants' pending motion to strike is
15 not authorized by the rules and is, therefore, STRICKEN. The Court will independently
16 evaluate the admissibility of the declarations and affidavits. As a result, plaintiff's "Motion for
17 Order to Show Cause for Delay in Service of Pleadings; and/or to Disallow Defendant's Motion
18 to Strike; and/or to Renuke Motion to Strike for Hearing on September 26, 2008, and to Permit
19 Surreply, in the Alternative" (Dkt. #67) is DENIED as moot. In evaluating plaintiff's evidence
20 regarding the delay in defendants' service of pleadings, the Court notes that it appears some
21 pleadings were served upon plaintiff in an untimely manner. The Court expects defendants to
22 serve all future pleadings as soon as possible.

23 III. CONCLUSION

24 For the foregoing reasons, the Court CONTINUES defendants' motion for summary
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1 judgment (Dkt. #31), GRANTS plaintiff's motion to dismiss defendant Dale Brandland (Dkt.
2 #43), STRIKES defendants' motion to strike (Dkt. #61), and DENIES as moot plaintiff's motion
3 (Dkt. #67). The Court also ORDERS the parties to SHOW CAUSE by Friday, October 24, 2008
4 why sanctions should not be imposed for their failure to comply with the Court's April 25, 2008
5 order (Dkt. #46).

6 The Clerk of the Court is directed to place this Order to Show Cause on the Court's
7 calendar for Friday, October 24, 2008. The Clerk is further instructed to renote Defendants'
8 Motion for Summary Judgment (Dkt. #31) to December 12, 2008.

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10 DATED this 15th day of October, 2008.

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15 Robert S. Lasnik
16 United States District Judge
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